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State v. Bruce Appellant's Brief Dckt. 43913

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43913
)	
v.)	BANNOCK COUNTY
)	NO. CR 2015-8777
)	
JESSE WHITEWOLF BRUCE,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jesse Whitewolf Bruce was sentenced to a unified term of ten years, with five years fixed, following his conviction for involuntary manslaughter. He contends the district court abused its discretion when it imposed this sentence in light of the mitigating factors that exist in this case.

Statement of Facts and Course of Proceedings

While under the influence of methamphetamine, Mr. Bruce got into an argument with L'ric Elkins, and stabbed Mr. Elkins, who died from his injury. (Tr., p.13, L.21 – p.15, L.6; R., p.154.) Mr. Bruce was charged by Information with second degree murder

and entered a plea of not guilty. (R., pp.128-29, 133.) Mr. Bruce then entered into an agreement with the State pursuant to which he pled guilty to an amended charge of involuntary manslaughter. (R., pp.153-59.) The district court accepted Mr. Bruce's guilty plea and sentenced him to a unified term of ten years, with five years fixed. (Tr., p.16, Ls.1-6; R., pp.150, 176.) The judgment was entered on December 22, 2015. (R., pp.177-82.) Mr. Bruce filed a timely notice of appeal on January 14, 2016. (R., pp.188-91.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Bruce to a unified term of ten years, with five years fixed, in light of the mitigating factors that exist in this case?

ARGUMENT

The District Court Abused its Discretion When It Sentenced Mr. Bruce To A Unified Term Of Ten Years, With Five Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Bruce asserts that, given any view of the facts, his unified sentence of ten years, with five years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, "the appellant bears the burden of demonstrating that it is a clear abuse of discretion." *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). "When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). "A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution." *Id.* (citation omitted). "When reviewing the reasonableness of a sentence this Court will

make an independent examination of the record, 'having regard to the nature of the offense, the character of the offender and the protection of the public interest.'" *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence imposed upon Mr. Bruce was not reasonable considering the nature of the offense, the character of the offender and the protection of the public interest. Mr. Bruce stabbed Mr. Elkins in the back during the course of a fight. (Tr., p.13, L.21 – p.15, L.6; R., p.154.) As he described it, he went into the bathroom with Mr. Elkins, "[a]nd he hit me, and then I hit him . . . [a]nd then . . . there was a knife, and I stabbed him." (Tr., p.13, L.21 – p.14, L.1.) The crime was not premeditated and Mr. Bruce did not intend to kill Mr. Elkins. Both Mr. Bruce and Mr. Elkins were using methamphetamine at the time and, as Mr. Bruce told the district court at sentencing, it "just messes with your mind completely." (Tr., p.37, Ls.11-14.) Mr. Bruce accepted responsibility for his conduct and acknowledged he used excessive force. (Tr., p.14, L.16.) He is deserving of punishment, but not ten years, with five years fixed.

The sentence imposed upon Mr. Bruce was also not reasonable considering the character of the offender. Mr. Bruce was 26 years old at the time of the offense, and this was his first felony conviction. (Presentence Investigation Report ("PSI"), pp.7, 14.) Mr. Bruce was raised by a loving family and had previously worked in roofing and firefighting. (PSI, pp.7-10.) Mr. Bruce's adoptive mother spoke on her son's behalf at sentencing. (Tr., p.26, L.15 – p.28, L.18.) She described her son as "a very loving person" who "would give anybody the shirt off his back." (Tr., p.27, Ls.2-9.) She attributed her son's offense to drugs and said she believed "it was drugs on both sides."

(Tr., p.28, Ls.17-18.) Mr. Bruce asked for forgiveness at sentencing and apologized to Mr. Elkins' family. (Tr., p.37, Ls.15-16.) He said:

First of all, I want to say my heart goes out to his family. I was—I didn't mean to do what I did. And it's something I have to—it's the regret I have to live with for the rest of my life. And I suffer from it, from PTSD. I mean I'm not—that's not's me, you know, the type of person that would take somebody else's life.

(Tr., p.36, L.24 – p.37, L.5.) Mr. Bruce is a good, loving person, who got into a fight, and used excessive force, which had the unintended consequence of taking a life. The district court abused its discretion in failing to adequately consider Mr. Bruce's character at sentencing.

The sentence imposed upon Mr. Bruce by the district court was also not reasonable considering the protection of the public interest. Prior to the instant offense, Mr. Bruce had a very minimal criminal record and had never committed a crime of violence. (PSI, pp.5-7.) Counsel for Mr. Bruce recommended a sentence of seven years, with two years fixed, and with a period of retained jurisdiction. (Tr., p.25, Ls.6-9.) This sentence would have protected the public interest and would have accomplished the other goals of sentencing. Considering all of the mitigating factors, and notwithstanding the aggravating factors, the district court abused its discretion when it sentenced Mr. Bruce to a unified term of ten years, with five years fixed.

CONCLUSION

Mr. Bruce requests that the Court reduce his sentence as it deems appropriate or vacate his sentence and remand this case to the district court for resentencing.

DATED this 16th day of June, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of June, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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E-MAILED BRIEF

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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas